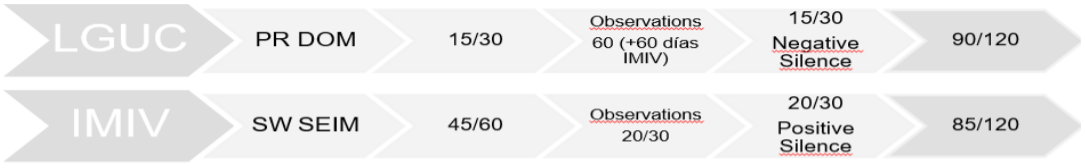
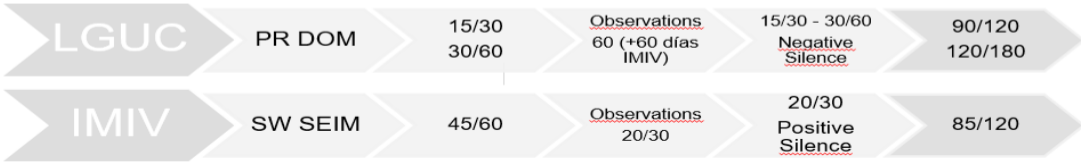
Part I: Permitting - Are we on the right track?

María José Álvarez, Director of the real estate area of Fontaine & Cia Abogados, began the talk with a presentation on Law No. 21.718, on Expediting Construction Permits, which was published in the Official Gazette on November 29, 2024, pointing out some of the main reforms it introduces in various regulatory bodies, and deepening on some of the most relevant aspects of the aforementioned law about construction permits, analyzing in particular whether the modifications it introduces will influence in practice in reducing the deadlines for obtaining construction permits more expeditiously.

María José analyzed, in particular, the elimination of the municipal illegality claim, replacing it with a new illegality claim before the SEREMI MINVU, whose procedure expressly incorporates rules of negative administrative silence, with the possibility of appealing against the decisions of said Service before the respective Court of Appeals, highlighting that the rule that introduces this new claim procedure does not contemplate the declaration of the right to compensation for damages.

Subsequently, he made a comparison between the terms considered in our previous legislation for obtaining a building permit in the urban area, together with the term for processing an IMIV (Road Mitigation Report), comparing these terms with those established in the new law, recently published in the Official Gazette.





María José continued her presentation by referring to the Framework Bill on Sectoral Authorizations (Bulletin No. 16,566-03), which is currently under discussion in our National Congress, pointing out that the latter will also contribute to the simplification of administrative processes for obtaining sectoral permits related to the construction industry, avoiding duplication of tasks and processes among various administrative bodies, through the creation of a single national window to channel these requests.

The speaker concluded her presentation by stating that the Law and the Bill mentioned above are good news for the construction sector, providing greater legal certainty to investors and contributing to the confidence of private investors in the development of this type of project, reducing arbitrariness in the interpretation of legal norms by various administrative authorities.

Part II: Problems of the Environmental Impact Assessment System.

Lukas Hudson, associate lawyer of the firm's legal department, began his presentation with a summary of the sectoral permits required for the execution of a construction project, distinguishing whether these must be submitted to the Environmental Impact Assessment System, through an Environmental Impact Declaration (DIA) or an Environmental Impact Study (EIA), depending on the impacts generated by the project, that is, so that once the assessment process is completed, the individual obtains a favorable Environmental Qualification Resolution (RCA) from the administration.

He continued his presentation with a summary of the Draft Framework Law on Sectorial Authorizations, pointing out that Art. 4 of the bill leaves outside the scope of application of said law those authorizations granted within the framework of the Environmental Impact Assessment System, as well as the pronouncements issued by the sectorial bodies referring to the sectorial environmental permits within the aforementioned system. Notwithstanding the above, it was pointed out that the sectorial environmental permits subject to the said system are subject to the provisions established in the bill for the issuance of the administrative act by the competent sectorial body, distinguishing whether or not such permits requires entering the Environmental Impact Assessment System.

This could represent a relevant practical problem if the current bill is approved, since most of the infrastructure projects do require entering the SEIA, therefore, if said bill is not accompanied by the modification of other legal bodies related to the current environmental institutional framework, the lack of legal certainty currently existing will continue to be present.

Thus, and reinforcing the previous idea, the current Bill which seeks to strengthen the environmental institutionality and improve its efficiency, thus strengthening in some points Law No. 19,300 on General Bases of the Environment, was discussed. The Bill does not contemplate a modification to the first paragraph of Article 25 ter. of Law No. 19,300 on General Bases of the Environment, which prescribes that the *"resolution that favorably qualifies a project or activity will expire when more than five years have passed without the execution of the authorized project or activity having begun, counted from its notification".* This situation could lead us to a practical and extreme problem in which, once the developers have obtained the respective building and other permits that allow them to start construction, the RCA that covered the project expires.

Part III: Breach of Construction Contracts in Chile.

Rodrigo Hernández, an engineer with more than 20 years of national and international experience in the contract management for Owners and Contractors involved in large-scale infrastructure projects, spoke about the main contractual breaches in construction contracts.

The speaker briefly explained what constitutes a breach of contract in the context of a construction contract, from the point of view of the Owner, the Contractor, and other parties involved, differentiating between a breach of essential clauses of the contract, such as when the owner of the work refuses to pay the price once the construction is completed, and those breaches of non-essential clauses, concerning certain aspects of the contract, intentionally or by omission.

Rodrigo explained some of the main causes of non-compliance with the obligations established in the construction contracts, which are summarized below:

(i) delays or lack of payment statements;
(ii) lack of compliance with waste disposal regulations;
(iii) the contractor refuses to correct work that has been poorly executed;
(iv) the owner does not accept a price adjustment against a change order defined in the contract;
(v) the contractor fails to perform the work without just cause, or denies access to the construction site;
(vi) the contractor hires unauthorized subcontractors;
(vii) the principal terminates the contract early, without just cause;
(viii) the contractor uses unauthorized materials and construction specifications;
(ix) the client wants to implement additional or extraordinary works during the development of the project;
(x) the client does not obtain the construction permits on time.

He concluded his presentation by summarizing some of the main dispute-resolution mechanisms commonly established in national and international construction contracts.

Part IV: The Impact on Project Finance.

Ignacio Holmberg, a senior associate attorney in the financing area of the firm, spoke about the obstacles posed by the problems described above, and mainly, the lack of legal certainty related to obtaining the necessary permits for the development of construction projects, from the perspective of those who finance such projects.

He began his presentation with a brief explanation of how investors finance this type of project, the structure of the financing contracts, and the main milestones that condition the delivery of financial resources by the financiers, which are listed below as a summary:

(i) Obtain the necessary construction permits and their validity throughout the construction process;
(ii) To obtain the definitive reception of the construction works;
(iii) Obtain the RCA and its validity during the construction process;
(iv) Obtain the IMIV (Road Impact Mitigation Report);
(v) Approval of the construction companies and their financial statements;
(vi) Compliance with construction contracts; and
(vii) Approval of the state of progress of the work by the ITO (Technical Inspector of Works).

Thus, one of the main victims of delays in obtaining the necessary permits for the execution of construction projects are the financiers, who, given the current conditions, in the present scenario are almost only granting loans for projects that are in the operation phase, with real and effective cash flows, restricting the granting of loans for the execution of new projects, due to the risks to which these entities are exposed.

Ignacio continued his presentation by pointing out that the above poses a contradiction considering that in our country, on the one hand, there is a housing deficit that we must reduce, which should imply the activation of the construction sector and its financing. However, on the other hand, all the bureaucracy currently in place achieves precisely the opposite.

In connection with the above, Ignacio used as an example the insurance companies, which are allowed to finance real estate developments and thus better fulfill their commitments to the people who have chosen some of their products (e.g. life annuities), either through the execution of real estate lease-purchase contracts or through the direct acquisition of buildings to be used for rental purposes. A similar situation also affects Pension Fund Administrators, which are also allowed to invest in the acquisition of real estate.

Thus, one of the main duties of insurance companies and Pension Fund Administrators, regarding the investment portfolio they manage, is the fiduciary duty, by which they cannot assume the risks involved in our current regulatory framework, and the arbitrariness often shown by the administrative authorities in the interpretation of legal norms.

Part VI: Suburban Rail Loop and the Australian Experience.

Matthew Bell, Associate Professor and Co-Director of the Construction Law Program at the University of Melbourne, Australia, and Consultant (part-time) to the Major Projects and Construction group at Clayton Utz, spoke about the *"Suburban Rail Loop"* (SRL) project, which consists of the construction of a 90-kilometer orbital railway line, crossing and connecting various existing urbanized areas in the city of Melbourne, to be developed in different stages, which will be built mostly through tunnels (and which considers a multi-billion dollar investment).

He explained that all three levels of government are involved in the infrastructure project (Federal, State, and local).

For the execution of a project of this magnitude, which only in its first stage of implementation considers an estimated cost of 84.1 billion Australian dollars, a special law was passed, called the Suburban Rail Loop Act 2021, through which an integrated agency was created with the power to develop zoning plans for certain areas of the project and to declare subway land as "project land", transferring public and private rights to the project authority, with limited compensation rights.

One of the main objectives of the project, and of the special legislation that had to be enacted to carry it out, is to *"eliminate the bureaucracy that the Government imposes on its activities, reduce administrative costs and save time, allowing the benefits of the Project to be brought forward".*

Matthew concluded his presentation by pointing out some of the main challenges that the Project will face in its execution phase, such as environmental, planning, Indigenous, geotechnical, and financial issues, analyzing the challenges involved in developing the necessary regulatory framework for the execution of the project, which requires the collaboration of various administrative and governmental authorities for its implementation.